

DEC 19 2008

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6034

DATE COMPLAINT FILED: July 7, 2008<sup>1</sup>

DATE OF NOTIFICATION: July 11, 2008

LAST RESPONSE RECEIVED: August 29, 2008

DATE ACTIVATED: September 16, 2008

EXPIRATION OF STATUTE OF  
LIMITATIONS: April 2, 2013

**COMPLAINANT:**

Todd Myers

**RESPONDENTS:**

Manion for Congress and Richard Durso, in his  
official capacity as treasurer<sup>2</sup>  
Worth & Company, Inc.

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 434(b)  
2 U.S.C. §§ 441b(a) and (b)  
2 U.S.C. § 441d(c)  
11 C.F.R. § 100.94  
11 C.F.R. § 104.11  
11 C.F.R. § 110.6(b)(2)  
11 C.F.R. § 110.11(c)  
11 C.F.R. §§ 114.2(f)(1) and (2)  
11 C.F.R. § 114.5(g)  
11 C.F.R. § 114.6  
11 C.F.R. §§ 114.9(c) and (d)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The complaint in this matter alleges that Worth & Company, Inc. ("Worth") made, and  
Manion for Congress and Richard Durso, in his official capacity as treasurer, (the "Committee")

<sup>1</sup> Although the complaint was time stamped as received by the Commission on July 7, 2008, it was dated July 1, 2008, a point of contention discussed below at pp. 5-6.

<sup>2</sup> Susan Manion was the Committee's treasurer when the alleged violations occurred. Richard Durso replaced her as treasurer on September 11, 2008.

1 knowingly accepted prohibited in-kind corporate contributions in the form of facilitated corporate  
2 resources provided by the former and not paid for timely by the latter, in violation of 2 U.S.C.  
3 § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R.  
4 § 114.2(f). Specifically, the complaint maintains that Worth used its corporate facilities, which  
5 included its rooms, employees, and its payment of food, beverages and other expenses with corporate  
6 funds, for a fundraiser on behalf of then-candidate Tom Manion, who was running for Pennsylvania's  
7 8<sup>th</sup> Congressional District, without compensation from the Committee.

8 Additionally, the complaint asserts that Worth solicited contributions for the event outside its  
9 restricted class, despite the prohibitions set forth in 2 U.S.C. § 441b(b) and 11 C.F.R. § 114.5(g), and  
10 secretly "bundled" contributions by having an unnamed Worth employee collect and forward the  
11 contribution checks received at the event to the Committee, in violation of 11 C.F.R. § 110.6(b).  
12 Finally, the complaint alleges that the invitations distributed in connection with the event contained a  
13 defective and misleading disclaimer, contrary to 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c). In  
14 response, Worth and the Committee, replying separately, claim that they committed no substantive  
15 violations of the Act, but if Worth and/or the Committee committed any violations of the Act, they  
16 were technical, so the complaint should be dismissed or transferred to the Alternative Dispute  
17 Resolution Office.

18 As discussed in more detail below, we recommend that the Commission: (1) find reason to  
19 believe Manion for Congress and Richard Durso, in his official capacity as treasurer, violated  
20 2 U.S.C. §§ 434(b) and 441b(a), and 11 C.F.R. §§ 104.11(b) and 114.2(f), by knowingly accepting a  
21 prohibited in-kind corporate contribution in the form of food and beverages provided by Worth, the  
22 cost of which was untimely reimbursed by the Committee, and failing to disclose it on its 2008 Pre-  
23 Primary Report as debt incurred by the Committee; (2) find reason to believe that Worth violated

10044262892

1 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by making a prohibited in-kind corporate contribution in  
2 the form of food and beverages for which the Committee did not pay in advance; (3) find no reason to  
3 believe that Worth or Manion for Congress and Richard Durso, in his official capacity as treasurer,  
4 violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by making and knowingly accepting, respectively,  
5 a prohibited in-kind corporate contribution in the form of printing and miscellaneous costs because the  
6 Committee reimbursed Worth within a commercially reasonable time; (4) find reason to believe that  
7 Worth violated 2 U.S.C. § 441b(b) and 11 C.F.R. § 114.5(g) by soliciting contributions outside its  
8 restricted class; (5) dismiss the allegation that Worth and Manion for Congress and Richard Durso, in  
9 his official capacity as treasurer, violated 11 C.F.R. § 114.2(f) with respect to Worth's provision of a  
10 room for the fundraiser and an employee's time spent working on the event; (6) dismiss the allegation  
11 that Manion for Congress and Richard Durso, in his official capacity as treasurer, violated 2 U.S.C.  
12 § 441d(c) with respect to the disclaimer and send an admonishment letter; (7) find no reason to believe  
13 that Worth violated 11 C.F.R. § 110.6(b)(2) with respect to the collection and forwarding of  
14 contributions; and (8)

## 16 **II. FACTUAL AND LEGAL ANALYSIS**

### 17 **A. Facts**

18 Worth, which is located in Pipersville, PA and employs approximately 400 people,  
19 provides mechanical contracting and maintenance services. See <http://www.worthandcompany.com>.  
20 On March 25, 2008, Worth organized and hosted a fundraiser, billed as a "champagne reception," for  
21 congressional candidate Tom Manion in a room located in its facility, at which attendees could join  
22 "Worth & Company and other business leaders" in "support[ing] Republican Candidate Tom Manion."  
23 See Invitation (attached to Complaint). Worth acknowledges that before this event, it had never

10044262893

1 organized a political fundraiser at its facility and was unfamiliar with the Act and its underlying  
2 regulations. Worth Response at 1-2. According to Worth, it became involved with the fundraiser  
3 because one of its managers, Steve Cantrell, wanted to honor Todd Manion, the candidate's late son,  
4 with whom he had served in Iraq, and who had died while on duty there. *Id.* at 4. Worth provided its  
5 guests with \$4,424.17 worth of food and beverages but maintains that it did so solely to make attendees  
6 at the fundraiser feel comfortable, and not "in an effort to circumvent the FECA, nor to curry favor  
7 with Manion," *Id.* at 2, *see also* Invoice dated June 27, 2008 (attached to Worth Response).

8         Worth also printed and distributed invitations for the fundraiser. The Invitations requested that  
9 attendees, who were asked to donate at least \$250 per person, RSVP to Sara Alexander at her corporate  
10 email address, salexander@worthandcompany.com, or her office telephone number. Complaint at 2.  
11 Worth identifies Alexander as the Executive Assistant to Company President Stephen Worth, and it  
12 maintains that she volunteered to make arrangements for the Manion fundraiser, including circulating  
13 invitations via email and U.S. mail, while performing her normal work duties. Worth Response at 2.  
14 Alexander herself did not supply an affidavit or response. Worth also denies that it coerced its  
15 employees to participate in the fundraiser. *Id.* The RSVP information is contained in a shaded box at  
16 the bottom of the invitation, which also includes the disclaimer "Paid for by Manion for Congress."  
17 Complaint at 5. As shown in the Invoice attached to Worth's response, the printing costs included  
18 \$1,038.80 for 2,000 color copies of "Tom Manion Flyers" (presumably for the invitations to the event),  
19 and \$150 for miscellaneous expenses, including Worth's estimate of the cost of postage. Adding these  
20 expenses (\$1,188.80) with the \$4,424.17 in food and beverage costs yields \$5,612.97.

21         According to Worth, approximately 75 people attended the fundraiser, most of whom were  
22 described as "family and close friends of Worth employees." *Id.* The Committee maintains that the  
23 event raised approximately \$16,400, Committee Response at 2, after which the contributions were

10044262894

1 collected by a Manion campaign intern at the event who forwarded them to the Committee for  
2 reporting and depositing. *Id.*

3 Worth did not bill the Committee for the \$5,612.97 in food, beverage, printing, and  
4 miscellaneous expenses until June 30, 2008, 95 days after the March 25, 2008 event. *Id.* at 2. The  
5 Committee maintains that it paid Worth in full on June 30, 2008, the same date that the Committee  
6 received the Invoice from Worth, *see* Committee's disbursement check to Worth, dated June 30,  
7 2008 (attached to the Committee's Response), and its 2008 July Quarterly Report apparently reflects  
8 this disbursement. Worth acknowledges that the *Philadelphia Inquirer* contacted Worth executives  
9 on June 30, 2008, but points out that the *Philadelphia Inquirer* news report, which raised questions  
10 about the Manion fundraiser similar to those raised in the complaint, was dated July 1, 2008, the  
11 same date reflected on the complaint. The *Philadelphia Inquirer* report was also printed one day after  
12 the Committee received and paid the Invoice amount. *See* Complaint at 7; Worth Response at 3; *see*  
13 *also* [http://www.philly.com/inquirer/local/20080701\\_Fund-raiser\\_for\\_candidate\\_faulted.html](http://www.philly.com/inquirer/local/20080701_Fund-raiser_for_candidate_faulted.html).

14 **B. Analysis**

15 **1. Corporate Facilitation**

16 **a. Payment for Food and Beverages**

17 Corporations are prohibited from making contributions in connection with Federal elections,  
18 including using corporate resources or facilities to engage in fundraising activities in connection with  
19 any federal election beyond certain limited exemptions set forth in the Commission's regulations. *See*  
20 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f). Political committees are prohibited from knowingly  
21 accepting such contributions. *Id.* For example, a corporation may not provide catering or other food  
22 services in connection with fundraising unless it obtains advance payment for the fair market value of  
23 the goods. *See* 11 C.F.R. § 114.2(f)(2)(i)(E).

10044262895

1 Here, Worth did not seek pre-payment for the food and beverages served at the fundraiser, as  
2 required. Instead, Worth provided for the catering of the event and did not bill the Committee until 95  
3 days later when, as noted above, the *Philadelphia Inquirer* was investigating the matter. Thus, the  
4 \$4,424.17 amount spent by Worth on the Manion fundraiser constituted the use of corporate facilities  
5 and, thus, a prohibited in-kind contribution from Worth that the Committee knowingly accepted.  
6 Therefore, we recommend that the Commission find reason to believe that Worth, Manion for  
7 Congress and Richard Durso, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) and  
8 11 C.F.R. § 114.2(f) in connection with the food and beverages at issue.

9 **b. Payment for Other Costs on the Invoice and Reporting**

10 With respect to the other expenses found on the Invoice, printing and miscellaneous expenses  
11 that collectively totaled \$1,188.80, the Commission's regulations require that such expenses must be  
12 reimbursed by a committee within a "commercially reasonable time" in order to avoid causing  
13 corporate facilitation, *see* 11 C.F.R. § 114.2(f)(2)(B). The Commission has found a number of  
14 different arrangements to be acceptable, including a situation where the corporation did not bill the  
15 campaign for 90 days, *see* MUR 5985 (Tim Burns). As such, the fact that the Committee was billed 95  
16 days after the event in question appears to be reasonable. Therefore, we recommend that the  
17 Commission find no reason to believe that Worth, Manion for Congress and Richard Durso, in his  
18 official capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) in connection with  
19 the cost of the invitations and miscellaneous expenses.

20 However, the Act requires that political committees disclose debts incurred until extinguished,  
21 *see* 2 U.S.C. § 434(b) and 11 C.F.R. § 104.11(a), and debts exceeding \$500 must be disclosed as of the  
22 date they are incurred. 11 C.F.R. § 104.11(b). Because the Committee failed to disclose the \$5,612.97  
23 cost of the fundraiser on its 2008 Pre-Primary Report as debt incurred no later than March 25, 2008, we

10044262896

1 recommend that the Commission find reason to believe that Manion for Congress and Richard Durso,  
2 in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.11(b).

3 **c. Compensation for use of Worth's rooms for fundraiser**

4 Corporate facilitation also occurs when a corporation makes its meeting rooms available for a  
5 candidate's fundraiser, but does not make the room available for civic or community groups. See  
6 11 C.F.R. § 114.2(f)(2)(i)(D). Here, the complaint alleges that the Committee should have paid Worth  
7 for the use of the rooms in its corporate facilities where it held the reception. Worth responds generally  
8 that it made the room that was used for the event available to other civic groups and, therefore, no  
9 payment by the Committee was required. This assertion is undisputed, but it is also unsubstantiated  
10 and unsworn, and does not provide specific information regarding its past practice with respect to  
11 loaning its facilities to civic groups. To determine definitively whether Worth's representation is  
12 accurate, an investigation would be necessary. However, in light of the relatively small amount of  
13 money involved in this matter, and in the interest of conserving Commission resources, we recommend  
14 that the Commission exercise its prosecutorial discretion and dismiss this allegation against Worth and  
15 Manion for Congress and Richard Durso, in his official capacity as treasurer. See *Heckler v. Chaney*,  
16 470 U.S. 821 (1985).

17 **d. Use of Worth Employee Sara Alexander**

18 Section 114.9(a)(2) of the Commission's regulations contains a safe harbor from the  
19 corporate facilitation rules for volunteers. Individual volunteer activity that does not exceed one hour  
20 per week or four hours per month, regardless of whether the activity is undertaken during or after  
21 normal working hours, as well as voluntary individual Internet activities, as set forth in 11 C.F.R.

10044262897

1    § 100.94, fall within the safe harbor, provided that the activity does not prevent an individual from  
2    completing the normal amount of his or her compensated work, does not increase the overhead or  
3    operating costs of the corporation, and is not performed under coercion. *See* 11 C.F.R.  
4    § 114.9(a)(2)(ii).

5           With respect to Alexander, the employee who allegedly assisted with the Manion fundraiser,  
6    Worth denies coercing her and states that her work on the Manion fundraiser did not prevent her from  
7    completing her normal load of compensated work. Alexander did not supply an affidavit or response.  
8    However, as with several of the complaint's other allegations, the Commission would have to  
9    undertake an investigation to establish the full scope of Alexander's purported volunteer activities,  
10   which we would not recommend, given the low dollar amount involved and the need to conserve  
11   Commission resources. Therefore, we recommend that the Commission likewise exercise its  
12   prosecutorial discretion and dismiss this allegation against Worth and Manion for Congress and  
13   Richard Durso, in his official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

14           **e. Altered Collection and Forwarding of Contributions**

15           Although corporations are prohibited from collecting and forwarding contributions to  
16    candidates, 11 C.F.R. § 110.6(b)(2)(i)(E), there is no indication, save for the complaint's unsupported  
17    allegation, that Worth acted as a conduit for the contributions raised at the Manion fundraiser. In  
18    contrast, the Committee has stated that a Manion campaign volunteer collected and forwarded the  
19    contributions made at the fundraiser. Thus, we recommend that the Commission find no reason to  
20    believe that Worth illegally collected and forwarded contributions from the fundraiser, in violation of  
21    11 C.F.R. § 110.6(b)(2). *See* Statement of Reasons in MUR 4960 ((Hillary Rodham Clinton for U.S.  
22    Senate Exploratory Committee, issued December 21, 2000), four Commissioners stated, "Absent

10044262898



1 personal knowledge, the Complainant, at a minimum, should have made a sufficiently specific  
2 allegation . . . so as to warrant a focused investigation that can prove or disprove the charge”).

3 **2. Worth's Solicitations Outside its Restricted Class**

4 Corporations such as Worth, which are not publicly traded and do not have stockholders, may  
5 solicit their executive and administrative personnel, as well as their families, at any time, 2 U.S.C.  
6 § 441b(b)(4)(A) and 11 C.F.R. § 114.5(g), and, twice a year, they may solicit other employees, such as  
7 professionals represented by labor unions and their families. 2 U.S.C. § 441b(b)(4)(B) and 11 C.F.R.  
8 § 114.6. Solicitations of other individuals, including other employees, are not permitted, *see* A.O.  
9 1993-16 (Blue Cross) (only regional sales managers had sufficient supervisory experience to qualify as  
10 “executive or administrative personnel”) and MUR 5749 (GSP) (Commission found reason to believe  
11 (“RTB”) that corporation solicited at least nine individuals outside its restricted class).

12 Worth's printing of approximately 2,000 color copies of the Manion fundraiser invitations  
13 indicates that it solicited individuals outside of its 400-person company and their families. Worth does  
14 not deny such activity, as it acknowledges that “close friends” of its employees attended. Therefore,  
15 we recommend that the Commission find reason to believe that Worth violated 2 U.S.C. § 441b(b) and  
16 11 C.F.R. § 114.5(g).

17 **3. Improper Disclaimer**

18 The Committee states, upon information and belief, that over 500 invitations for the March  
19 25<sup>th</sup> event were mailed, *see* Committee Response at 8, which constitutes a public communication  
20 subject to the Act's disclaimer requirements. *See* 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c)(2)(ii).  
21 Disclaimers on printed material are required to be printed in a box set apart from other information on  
22 the material. *Id.* As the Committee—who paid for the communication when it reimbursed Worth—  
23 acknowledges, the disclaimer on the Manion fundraiser invitation was not in a printed box set apart

10044262899

1 from the remainder of the invitation, as required by 11 C.F.R. § 110.11(c)(2)(ii). Because of this  
2 deficiency, the Committee appears to have violated 2 U.S.C. § 441d(c)(2) and 11 C.F.R.  
3 § 110.11(c)(2)(ii).

4  
5  
6  
7  
8 consistent with Commission practice of  
9 dismissing similar "disclaimers in printed box" cases, see MUR 5985 (Tim Burns for Congress) (where  
10 corporation purchased signs and distributed mass mailings for candidate which lacked printed box  
11 around disclaimer, for which committee later reimbursed the corporation; Commission admonished  
12 committee and dismissed the matter); see also MUR 5925 (Foust) (with respect to mass mailing  
13 costing under \$3,000, which lacked printed box around disclaimer, Commission admonished  
14 committee and dismissed the matter); we recommend that the Commission dismiss this allegation  
15 against Manion for Congress and Richard Durso, in his official capacity as treasurer, and send an  
16 admonishment letter. See *Heckler v. Chaney*, 470 U.S. 821 (1985).

10044262901

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

110044262902

1

**2**

3

4

5

6

7

8

9

10

11

12

13

14

10044262903

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
  
12

---

13 **IV. RECOMMENDATIONS**

- 14 1. Find reason to believe that Manion for Congress and Richard Dureo, in his official  
15 capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441b(a), and 11 C.F.R.  
16 §§ 104.11(b) and 114.2(f),  
17  
18  
19 2. \_\_\_\_\_  
20  
21  
22 3. Find reason to believe that Worth & Company, Inc. violated 2 U.S.C. § 441b(a) and  
23 11 C.F.R. § 114.2(f) with respect to its failure to obtain pre-payment for the food and  
24 beverages at the Manion fundraiser; violated 2 U.S.C. § 441b(b) and 11 C.F.R.  
25 § 114.5(g) by soliciting outside its restricted class;  
26  
27  
28 4. \_\_\_\_\_

5. Find no reason to believe that Worth & Company, Inc. violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) in connection with the cost of the invitations and miscellaneous expenses related to the fundraiser at issue.
6. Find no reason to believe that Manion for Congress and Richard Durso, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) in connection with the cost of the invitations and miscellaneous expenses related to the Manion fundraiser.
7. Dismiss the allegation that Worth & Company, Inc. and Manion for Congress and Richard Durso, in his official capacity as treasurer, violated 11 C.F.R. § 114.2(f)(2) by holding the fundraiser in its facilities without receiving compensation, and allowing one of its employees to work on the event.
8. Find no reason to believe that Worth & Company, Inc. violated 11 C.F.R. § 110.6(b)(2) with respect to the allegation that it collected and forwarded contributions.
9. Dismiss the allegation that Manion for Congress and Richard Durso, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c) and send an admonishment letter.
10. Approve the attached Factual and Legal Analyses.

10044262904

11. Approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

12/19/08

Date

BY: Ann Marie Terzaken <sup>by</sup> *AM*

Ann Marie Terzaken  
Associate General Counsel  
for Enforcement

Stephen A. Gura  
Stephen A. Gura  
Deputy Associate General Counsel  
for Enforcement

Susan L. Lebeaux <sup>by</sup> *SL*  
Susan L. Lebeaux  
Acting Deputy Associate General Counsel  
for Enforcement

Ruth I. Heilizer  
Ruth I. Heilizer  
Attorney

10044262905